

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TYRONE P. JAMES

Plaintiff,

v.

YORK COUNTY POLICE DEPARTMENT,
JAMES H. MORGAN, RICHARD PEDDICORD,
RAYMOND E. CRUAL, GENE FELLS,
DET. KESSLER, CO. BAYLARK,
RANDY SIPES, BRIAN WESTMORELAND,
and DETECTIVE GLOWCZESKI
Defendants,

CIVIL ACTION NO. 1:01-CV-1015
(Judge Kane)
(Magistrate Judge Mannion)

JURY TRIAL DEMANDED

FILED
HARRISBURG, PA

AUG 18 2004

MARY E. D'ANDREA, CLERK
Per *[Signature]*
Deputy Clerk

MOTION FOR AN ORDER DIRECTING THE U.S. MARSHAL'S OFFICE TO SERVED SUBPOENAS

FOR THE PRODUCTION OF DOCUMENTS.

Plaintiff's, Tyrone P. James, pro se, Hereby request this Honorable Court to issue an Order, directing the U.S. Marshal's Office, to served subpoenas, upon the following Defendants employer's, and hereby avers the followings:

1. On September 18, 2001, this Honorable Court issued an Order granting Plaintiff's to proceeded in Forma Pauperis, pursuant to 28 U.S.C., 1915(c)).

2. On May 4, 2004, the Magistrate Judge, issued an order directing that all Discovery material, be completed on or around July 30, 2004, except for exceptional circumstances.

3. Plaintiff's filed a Motion For Enlargement Of Time; but this Court failed to respond, or addressed this matter.

4. New counsel, was entered for the following defendants, Morgan, Westmoreland, Craul, Glowczeski, and Peddicord.

5. Counsel, filed for extension of time; which was immediately granted.

6. On or around May 2004; Defendants served answers to Plaintiff's request for Admission; Defendants served Plaintiff's with answers to "Second Request For Interrogatories," on June 11, 2004.

7. Defendant in their answers and responses, made several objections, specifically, second interrogatories, number 7 and 8, relating to the Defendants

Work-History, such as, prior complaints filed against the defendants, past lethal weapon training, grievance filed with IAD, and use of excessive forces, or prior uses of excessive force. All Defendants denied such actions, in the Request For Admission, or objected to said request in the Second Request For Interrogation, order by this Court, by Judge Mannion, on May 4, 2004. In their responses they refuted such behavior.

8. On June 28, 2004, the Plaintiff's; served on the Clerk of Court, Subpoenas; to be forward to the U.S. Marshal's Office; for the U.S. Marshals, to served upon the respected employer's; also a Notice of Intent, was served on the Defendants counsels, and the various Mail Box Etc., [See Attachment].

9. Plaintiff's is presently incarcerated; without the representation of an competent attorney, to represent him in the civil matter, even though, he had filed several request for counsel, and can't afford to served Defendants Employer's and the appropriate, Mail Box Etc., such Subpoenas.

10. The interest of justice would not be served unless these Subpoena are served upon the defendants prospective employer.

11. Rule 45, does not establish any cut off or deadline for serving subpoenas. However, a subpoena for a deposition or for the production of documents may be governed by the discovery deadline. *Alper v. United States*, 190 F.R.D. 281, 283 (D. Mass. 2000). Service must be accompanied by the tender of the fees and expense for a 1-day appearance, unless the issuing party is the United States or officer or agency thereof. *Fisher v Ford Motor Co.*, 178 F.R.D. 195 (N.D. Ohio 1998). The amount of fees and expense is controlled by 28 U.S.C.A § 1821.

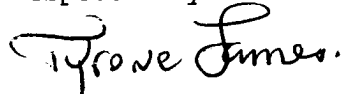
The United States Marshals are required to served subpoenas for parties proceeding in Forma Pauperis. See *United States v. Means*, 741 F.2d 1053, 1055 (8th Cir. 1984)(en banc)(point conceded by government); *Lindsey v. United States R.R. Retirement Bl.*, 101 F.3d 444, 447-48 (5th Cir. 1996); *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996); *Fed.R.Civ.P.Rule 4(c)(2)*.

Plaintiff's should not have to pay witness fees for a document subpoena,

since the rule permits the subpoenaed party to produce the document without appearing. Jackson v. Brinker, 1992 WL 404537 (S.D. Ind. 1992)(hold that a Court need not enforce subpoena that are unreasonable or abusive in some fashion); also see Badman v. Stark, 139 F.R.D. 601, 604-06 (M.D.Pa. 1991). Plaintiff's subpoenas requests for documents are reasonable and are within the scope of the Discovery process; the requests documents are relevant, and reasonable calculated to lead to other admissible evidence. These are factual material, relating to this action.

WHEREFORE, for these foregoing reason, Plaintiff's motion should be granted.

Respectfully Submitted,



Tyrone P. James

Date: August 9, 2004

EX 9451
P.O. Box A
Bellefonte, PA 16823-0820.

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TYRONE P. JAMES	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 1:01-CV-1015
	:	(Judge Kane)
	:	(Magistrate Judge Mannion)
YORK COUNTY POLICE DEPARTMENT,	:	
JAMES H. MORGAN, RICHARD PEDDICORD,	:	JURY TRIAL DEMANDED
RAYMOND E. CRUAL, GENE FELLS,	:	
DET. KESSLER, CO. BAYLARK,	:	
RANDY SIPES, BRIAN WESTMORELAND,	:	
and DETECTIVE GLOWCZESKI	:	
Defendants,	:	

CERTIFICATE OF SERVICE

I, Tyrone P. James, Plaintiff's, pro se, hereby certified that, I am this day serving a true and correct copy to assigned counsel's "Motion For An Order Directing The U.S. Marshal's Office To Served Subpoenas For The Production Of Documents," in the manner set forth below to the following, by placing said Legal mail into a legal envelop, by deposited into the institutional mail box, and turning over said documents to prison officials for mailings, on August 9, 2004.


I certify under penalty of perjury that the foregoing is true and correct; pursuant to 28 U.S.C. § 1746.

BY FIRST CLASS U.S. MAIL:

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